

Letter of Findings: 65-20220073
Indiana Overweight Proposed Assessment
for the Year 2022

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier provided sufficient evidence to establish that it should not be assessed the full penalty for operating a vehicle that was over the statutorily allowed weight on two axles.

ISSUE

I. Motor Vehicles - Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-18-14.5; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of an overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana based motor carrier. The Indiana State Police ("ISP") cited Taxpayer twice in one week for having overweight vehicles. Only one violation resulted in a civil penalty imposed by the Indiana Department of Revenue ("Department") and is the subject of this protest. Taxpayer's first violation resulted in a warning letter that was received by Taxpayer after the date of the second violation. In this second incident, ISP cited Taxpayer's commercial motor vehicle for an overweight violation on two axles as provided by IC § 9-20-18-14.5(d).

As a result, the Indiana Department of Revenue ("Department") issued Taxpayer a proposed assessment for an overweight violation in the form of a "No Permit Available Civil Penalty." Taxpayer protested the assessment and requested a final determination without hearing. This Letter of Findings results. Further facts will be provided, as necessary.

I. Motor Vehicles - Overweight Penalty.

DISCUSSION

Taxpayer argues that because both violations related to a specific supplier, it should not be required to pay the assessed penalty. Taxpayer notes that it has taken preventive measures to ensure future loads leaving this supplier are not overweight. Taxpayer provided documentation establishing that it contacted the specific supplier and loaders to distribute the weight in the trucks to comply with the legal requirements under IC § 9-20-18-14.5(d).

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable

interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty").

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." Under IC § 9-20-18-14.5(a) these listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

ISP cited Taxpayer's vehicle for being approximately 3,500 lbs. overweight on two axles in violation of IC § 9-20-4-1. The Department imposed a "No Permit Available Civil Penalty" in accordance with IC § 9-20-18-14.5(d) because Taxpayer was in excess of the legal per axle weight. Under IC § 9-20-18-14.5(d) no permit is available for instances where axles are overweight.

Taxpayer displayed efforts to correct the issue when they coordinated with the specific supplier and loaders to adjust and shift the weight in future shipments with the supplier. Taxpayer also notes a later inspection on a load from this specific supplier that was not an overweight violation. Based on Taxpayer's history of compliance and measures to correct the issue, the Department agrees the civil penalty should be reduced.

IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. In this case the Department will generate a proposed assessment with a reduced amount as authorized by its statutory discretion and this Letter of Findings.

FINDING

Taxpayer's protest is sustained in part and denied to the extent that Taxpayer did not prove the entire penalty should be removed.

July 18, 2022

Posted: 05/03/2023 by Legislative Services Agency
An [html](#) version of this document.